IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.162 OF 2005

Mrs.Smita Ganesh Bhole. ..Applicant.

V/s.

Sangli Bank Ltd., Sangli. ..Respondent.

Mr.Sugandh B.Deshmukh for applicant.

Mr.Chavan for S.S.Patwardhan for respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 23, 2006.

P.C. :

1. Heard counsel for the parties.

2. Rule.

3. Rule made returnable forthwith by consent. Mr.Patwardhan waives notice for respondent.

4. As short question is involved, revision application is taken up for hearing forthwith by consent.

5. This revision application takes exception to the Judgment and order passed by the 7th Jt.Civil Judge, S.D.Pune dated 29th September, 2005 below

Exh.87 in Spl. Darkhast No.142 of 1988. For the nature of order that I propose to pass it is not necessary to advert to the factual matrix of the case. Suffice it to observe that as a consequence of consent terms arrived at between the parties, suit filed by the respondent came to be decreed. The case made out by the applicant was that in terms of the obligation specified in the decree so passed, the applicant has paid the entire amount for which reason the decree be marked as fully satisfied.

6. This application was resisted by the respondent on the argument that only part payment has been received from the applicant out of the total outstanding amount noted in the extracts of account in the name of the applicant/Judgment debtor. According to the applicant, discrepancy in the two different figures provided by the parties arises essentially because of the nature of computation done by the respondent. It is the case of the applicant that the respondent has not computed the amount as per the decree i.e. interest at the rate of 18% per annum on the principal amount instead the respondent has computed on the basis of quarterly rest which was not the purport of the decree passed. On the other hand the case of the respondent is that the

computation done by the respondent is as per the agreed terms recorded in the consent terms on the basis of which decree has been passed. This rival stand has been considered by the Executing Court(Lower Court) as under :

> "According to him, Judgement Debtor are outstanding the amount of Rs.1,39,91,428/-. He has filed the extracts of the account tot hat effect along with list dt.12.4.2005. They have made the payment of Rs.21,95,113.50/-. Judgement Debtor has shown the said amount as 21,70,113/-.
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> Perused the documents which are produced by both the sides and the decreed as well as, the extracts of account produced by them. Therefore, it can be said that Judgement Debtor have not paid all the amounts as claimed by the Decree Holder, and so they cannot be discharged from the liability and they are not entitled for no dues certificate. Hence application is hereby rejected."

No other reason has been recorded. No attempt has been made by the lower court to address the issues raised by the respective parties nor the lower court has recorded a clear finding that the statement of account prepared by the respondent is correct thereby rejecting the claim of the applicant that wrong computation has been done. All that the lower Court has observed is that the extract produced by the respondent would indicate that the Judgment Debtor

has not paid full amount as claimed by the decree holder. In other words, without properly analysing the rival contention the lower court has jumped to conclusion that decree is not satisfied. This approach cannot be countenanced at all, either in fact or in law. Accordingly, the impugned order cannot be sustained. The question is whether this court should undertake this examination or analyse the rival stand for the first time. I am not inclined to do so. Such consideration should be done by the lower court at the first instance, so that this court will have the advantage of the reasons recorded by the first court on the facts in issue. Accordingly, the impugned Judgment is set aside. Revision application is allowed with direction that Application Exh.87 filed by the applicant is restored to file to its original number to be decided afresh by the lower Court on its own merits in accordance with the law, uninfluenced by any observation made in the impugned order or for that matter this order. No order as to cost.

7. Application disposed of accordingly.